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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,798	10/12/2001	Joseph C. Trautman	ARC 3043 R1	2432
22921	7590	02/17/2004	EXAMINER	
ALZA CORPORATION P O BOX 7210 INTELLECTUAL PROPERTY DEPARTMENT MOUNTAIN VIEW, CA 940397210			THOMPSON, KATHRYN L	
			ART UNIT	PAPER NUMBER
			3763	9
DATE MAILED: 02/17/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,798

Applicant(s)

TRAUTMAN ET AL.

Examiner

Kathryn L Thompson

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,7,8,10,11 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) 40-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7,8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.5
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Election/Restrictions*

Claims 40-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theeuwes et al (WO 98/28037). Theeuwes et al discloses a method of delivering or sampling glucose through the stratum corneum comprising providing a microprotrusion member having one or more stratum corneum-piercing microprotrusions, forming one or more microslits through the stratum corneum, and delivering or sampling glucose through said microslits (Page 2, Line 34- Page 3, Line 19). Theeuwes does not disclose impacting the stratum corneum with a power of at least 0.05 joules per cm<sup>2</sup> of the microprotrusion member in 10 milliseconds or less. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to impact the stratum corneum with a power of at least 0.05 joules per cm<sup>2</sup> of the microprotrusion member in 10 milliseconds or less because Applicant has not disclosed

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that this measurement provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the measurement taught by Theeuwes or the claimed measurement. Therefore, it would have been an obvious matter of design choice to modify Theeuwes to obtain the invention as specified in claim 8.

Claims 1-3, 7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theeuwes et al (WO 98/28037), Effenhauser (WO 96/17648), Gerstel et al (US 3,964,482), Gross et al (US 5,279,544), Godshall et al (US 5,879,326). The aforementioned patents all disclose a method of delivering or sampling glucose through the stratum corneum comprising providing a microprotrusion member having one or more stratum corneum-piercing microprotrusions, forming one or more microslits through the stratum corneum, and delivering or sampling glucose through said microslits. However, they do not disclose impacting the stratum corneum with a power of at least 0.05 joules per cm<sup>2</sup> of the microprotrusion member in 10 milliseconds or less. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to impact the stratum corneum with a power of at least 0.05 joules per cm<sup>2</sup> of the microprotrusion member in 10 milliseconds or less because Applicant has not disclosed that this measurement provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the measurement taught by Theeuwes et al (WO 98/28037), Effenhauser (WO

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96/17648), Gerstel et al (US 3,964,482), Gross et al (US 5,279,544), and Godshall et al (US 5,879,326) or the claimed measurement. Therefore, it would have been an obvious matter of design choice to modify Theeuwes et al (WO 98/28037), Effenhauser (WO 96/17648), Gerstel et al (US 3,964,482), Gross et al (US 5,279,544), and Godshall et al (US 5,879,326) to obtain the invention as specified in claims 1-3, 7, 10, and 11.

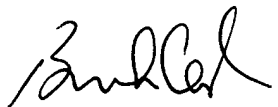
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn L Thompson whose telephone number is 703-305-3286. The examiner can normally be reached on 8:30 AM - 6:00 PM: 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KLT



**BRIAN L. CASLER**  
**SUPERVISORY PATENT EXAMINER**  
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